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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,966	02/11/2004	Michael Waters	69398	3570
22242	7590	02/09/2005	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			LU, JIPING	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/776,966	Applicant(s) WATERS, MICHAEL	
	Examiner Jiping Lu	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/2/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, , 8-9, 11, 16, 20 and 21 are rejected under 35 U.S.C. 102(b) as being by Sterick (U. S. Pat. 2,950,713).

Sterick shows a heating head 6 with a central longitudinal axis, a burner assembly 3-7 for generating combustion gases; and a plurality of isolated flue chambers 8 spaced about the head 6. Sterick also shows a tubular shaped inner wall 6 with a central longitudinal axis and a generally tubular outer wall 1 concentrically disposed outside the inner wall 6. Said outer wall 1 has alternating upraised portions and intervening lands and forms plurality of isolated flue chambers 8. for claim 20, see support member 2. For claim 21, the outer layer of inner wall 6 is deemed to be insulative.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-15, 17-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Sterick (U. S. Pat. 2,950,713).

The heating apparatus of Sterick as above includes all that is recited in claims 12-15 and 17-19 except for the numerical ranges and dimension of burner assembly and the material of the outer wall. However, the claimed numerical ranges and dimension are deemed to be obvious matter of adjustments in order to obtain an optimal operation since applicant has not disclosed that the claimed burner assembly ranges and dimension solve any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill in the art and it appears that the claimed feature does not distinguish the invention over similar features in the prior art. With regard to the claimed material of the outer wall, it would have been obvious to one having ordinary skill in the art at the time the invention was made to design the outer wall with any desired material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters (U. S. Pat. 6,164,273) in view of Sterick (U. S. Pat. 2,950,713).

Waters shows a patio heater comprising a heating head 70 with a tubular shaped inner wall 204 with a central longitudinal axis, a support 120 and a dome 124. A burner assembly 212 generates hot combustion gases. External 246 and internal 204 wall portions of the head cooperate to form flue gas chamber. The insulation material 210 is provided along the head internal wall portions. However, Waters does not show a plurality of isolated flue chambers.

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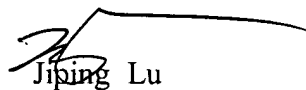
Sterick shows a generally tubular outer angled wall 1 concentrically disposed outside the inner wall 6. Said outer wall 1 forms a plurality of isolated flue gas chambers 8. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the outer angled walls 1 of Sterick for the outer walls 246 of Waters in order to form a plurality of isolated hot flue gas chambers and to maximize the heat transfer efficiency.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jiping Lu
Primary Examiner
Art Unit 3749

J. L.